

Errata Sheet Instructions

September 14, 2001

- 1) Remove State Contracting Manual Cover page (dated January 2001)**
- 2) Insert new State Contracting Manual Cover page (dated September 2001)**
- 3) Remove second page from Summary of 1/01 Changes (un-numbered page)**
- 4) Insert new second page for Summary of 1/01 Changes (un-numbered page) with new listing for change to Section 7.10.**
- 5) Remove pages 73 and 74.**
- 6) Insert new pages 73, 73.1, 73.2 and 74**

STATE CONTRACTING MANUAL

CURRENT AS OF SEPTEMBER 2001

Gray Davis, Governor

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The State Contracting Manual is a collaborative effort by the State Contracting Advisory Network (SCAN) made up of state employees dedicated to improving the state's contracting processes.

Notice

This publication is designed to provide accurate and current information about the law and state policies. Readers should consult the relevant codes, rules, and cases when relying on cited material.

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California Department of General Services

5.25	Clarify OLS approval policy on RFP secondary when costs points are under 30%
5.30	<ul style="list-style-type: none"> • Change DGS contacts • Grammar
5.70	<ul style="list-style-type: none"> • Emergencies do not require Sole Source • Add civil service justification as detailed in SCM 7.05
5.75	<ul style="list-style-type: none"> • Clarify advertising of amendments and that no agency action is required • Advertisement can be via Internet or Form 815
5.80	<ul style="list-style-type: none"> • Clarify that all special types of contracts (SAM 1233) needn't be bid • Contracts with CRPs justified under 19130(a) must be competitively bid • Contracts with CRPs justified under 19130(b) need not be competitively bid • Contracts for A/V equipment for a conference are exempt • Changed dollar limits
6.00	Insert code cite
7.10	Replaces entire section (10/97 with revision dated 9/01).
7.15	Dfeh Requirement is "in excess of", \$5,000 or more
7.20	Prompt Payment language revised
7.21	Independent Contractor information updated
7.70	Correct PCC citation
7.80	Grammar Correction
8.00 – 8.02	Changed DGS contact information
8.12	Gov. Agencies, colleges & Universities, and JPA's exempt from DVBE requirements
8.13, 8.14	Changed DGS contact information
8.16	Suggested language paragraphs for DVBE contracts
8.21	<ul style="list-style-type: none"> • Changed DGS contact information • Adds tie breaking procedures for small businesses & DVBEs
8.22	Prompt payment of small business. Reference SCM 7.20
8.30	Changed DGS contact information
9.02	Contract Managers should ensure DVBE compliance language is included
9.05	<ul style="list-style-type: none"> • Retention is 3 years from final payment under contract, not termination
9.09	Grammar
Chapter 10	Increase threshold amount to \$117,000 throughout
10.05	No Sole Source process available for Public Works
10.15	<ul style="list-style-type: none"> • Add Bond requirements of 100% • Add notation on subcontractor substitution
11.00	Add DGS OLS review will include review of agency regulations
11.03	Outline the Types of A&E contracts
11.06	Language moved and renumbered to new section 11.08
11.08 (new)	Separate section for negotiating the contracts (moved from 11.06)

7.05• CIVIL SERVICE CONSIDERATIONS

(Rev 1/01)

A. Basic considerations are as follows:

1. Contracting for Personal Services, in lieu of using Civil Service personnel is permitted only if the standards outlined in GC §19130 (a) or (b) are met. See 2 and 3 below.
2. Section 19130(a) permits contracting for personal services to achieve cost savings. Any state agency proposing to execute a contract based on cost savings to the state as justification for not using civil service personnel, must first notify the State Personnel Board of its intention. (GC § 19130(a)).
3. Section 19130(b) permits contracting for personal services when any of the requirements of 19130(b) are met. **See also SPB Regulations 2 CCR § 547.60**
4. Departments or agencies submitting a proposed contract to DGS for approval must retain all data and information relevant to the contract and necessary for a specific application of the standards set forth in GC § 19130(a) in the event that the State Personnel Board's review is requested. For standards of review see PCC § 10337.
5. GC § 19130(c) requires that all persons who provide services to the state under conditions that constitute an employment relationship shall, unless exempted by Article VII (Section 4) of the California Constitution, be retained under an appropriate civil service appointment. Therefore, state law and policy require that each state agency's contract for services with individuals be executed and administered in a manner consistent with the establishment of an independent contractor status when a civil service appointment is not intended. MM 95-18 provides the guidance necessary to make the required determination between employee status and independent contractor status. The management memo further requires a certification about employee status and independent contractor status for each individual engaged under contract.

B. Contracts awarded on the basis of GC § 19130(b) are subject to review at the request of an employee organization representing state employees. For standards of review see PCC § 10337.

C. Contracting out for services is permissible when any of the conditions set out in GC § 19130(b) can be met.

D. SPB regulations require agencies, when submitting contracts let under GC §19130(b) for DGS approval, to attach a written justification that includes specific and detailed factual information that demonstrates how the contract meets one or more of the conditions specified in GC. §19130 (b). (See www.spb.ca.gov).

7.10 • CONFLICTS OF INTEREST (7.10 entirely replaced as of 9/01)

(Rev 9/01)

- A. IS THERE A CONFLICT OF INTEREST? The phrase “conflicts of interest” covers several subjects. It requires state agencies to take a close look at who is doing the work under the contract. Agencies should develop a plan to review conflict of interest issues.

IS OR WAS THE CONTRACTOR A STATE EMPLOYEE? State agencies need to determine whether the contractor is or was a former or current state employee who is prohibited from contracting under the PCC 10410 – 10411 or GC 87401 et seq.

1. CONSULTANT CONTRACTS: State agencies must determine whether a consultant’s proposed duties create any reporting requirements under the Political Reform Act. Under some circumstances, consultants may be required to report economic interests; may be prohibited from receiving gifts; and/or may be disqualified from participating in certain decisions. Covered consultants may include:
 - a. Individuals performing services acting as a consultant with authority to
 - Approve a rate, rule or regulation.
 - Adopt or enforce a law.
 - Issue, deny, suspend, or revoke any permit, license, application, certificate, approval, order, or similar authorization or entitlement
 - Authorize your agency to enter into, modify, or renew a contract provided it is the type of contract that requires agency approval
 - Either grant agency approval to a contract that requires your agency’s approval and to which your agency is a party; or grant approval to the specifications for such a contract
 - Grant agency approval to a plan, design, report, study, or similar item
 - Adopt, or grant agency approval of, policies, standards, or guidelines for the agency, or for any subdivision of the agency
 - b. Individuals who serve, under contract, in a staff capacity with the agency and in that capacity participate in making a governmental decision as defined in 2 CCR 18702.2.
 - c. Individuals who perform the same or substantially all the same duties for the agency that would otherwise be performed by an individual holding a position specified in the agency’s Conflict of Interest Code under Government Code Section 87302.
2. IS THERE A PROHIBITED FINANCIAL INTEREST PRESENT? Employees and certain consultants may be prohibited from participating in decisions or participating in “making contracts” if they have a financial interest. See GC 1090 et seq. and GC 87400 et seq.
3. IS THERE A FOLLOW-ON CONTRACT INVOLVED? Consultants are prohibited from bidding on, or being awarded a contract that is required, suggested, or otherwise deemed appropriate in the end product of a previous consulting contract with them. See PCC 10365.5 to determine applicability.

B. RESOURCES

1. Fair Political Practices Commission: see www.fppc.ca.gov
2. Examine your department's Conflict of Interest Code to determine the reporting requirements for covered consultants.
3. Ethics Training: On line training (DOJ: see www.caag.state.ca.us/consultants/index.htm and www.caag.state.ca.us/ethics/ethifram.htm) or live classes (DGS) are available.
4. Your departmental legal office.

C. AGENCY RESPONSIBILITY

1. Agencies/departments must indicate on the Std. 215 that they have evaluated the proposed contract for any potential conflict of interest issues.
2. It will be presumed that an affirmative ("Yes") indication means that the department has made a determination that there are no facts known or reasonably known that would disqualify the proposed contractor from legally performing the contract.
3. DGS reserves the right to conduct an independent review for conflicts of interest during the course of its standard contract review. However, this does not relieve agencies from performing their review per B(2) above.

7.15 • REPORTING OF CONTRACTING PRACTICES

(Rev 1/01)

Legislation requires contracting agencies to submit various reports on contracting practices, as follows:

- A. Fair Employment and Housing (Within Ten Days of Award Date)
 - 1. Under 2 CCR § 8117.5, agencies awarding contracts are required to notify the Department of Fair Employment and Housing (DFEH), Office of Compliance Programs, of any contract awarded ~~for \$5,000 or more~~ **in excess of \$5,000**. Departments are required to submit one form STD 16 to the Office of Compliance Programs for each contract in excess of \$5,000 within ten days of the award date. Under some circumstances it may be possible to make other arrangements with DFEH.
- B. DVBE Report (Annually by January 14)
 - 1. PCC § 10115 et. seq. requires state agencies to have overall annual participation goals of not less than three percent for disabled veteran business enterprises (DVBE).
 - 2. Previously, state law placed participation goals on each contract. However, as of January 1, 1993, the law was changed to apply the same goals to the overall dollar amount awarded by each state department. Agencies must report annually to the Governor and the Legislature the level of participation in contracts covering construction; purchases of materials, supplies, and equipment; professional services; and all contracts for a dollar amount of less than \$25,000. If an agency does not meet the annual goals, it must also report the reasons for the inability to achieve the goals and the remedial steps it plans to achieve the goals (SCM 8).
- C. Small Business Report (Annually on August 1)
 - 1. The Small Business Procurement and Contract Act (SBPCA), GC § 14835, provides that a fair share of state purchases and contracts or subcontracts for property and services be placed with small business enterprises.